

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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MAR 25 2004

~~Federal Communication Commission~~
~~Bureau / Office~~

In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations.)
 (Cambridge and St. Michaels, Maryland))

MM Docket No. 04-20
 RM-10842

RECEIVED

To: Assistant Chief
 Audio Division

MAR 31 2004

Federal Communications Commission
 Office of the Secretary

**COMMENTS & COUNTERPROPOSAL
 OF
 ROUTE 12 COMMUNITY BROADCASTERS**

Comes now **ROUTE 12 COMMUNITY BROADCASTERS** ("Route 12"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 04-231, released February 13, 2004) ("NPRM")*, and hereby respectfully submits these Comments & Counterproposal in the above-captioned Rule Making proceeding. In support hereof, Route 12 submits the following:

Background

1. According to the NPRM, CWA Broadcasting, Inc. ("CWA") has requested the reallocation of Channel 232 from St. Michaels, Maryland to Cambridge, Maryland, with an upgrade of Channel 232 from Class A to Class B1 status for use by Radio Station WINX-FM. The proposed reallocation of Channel 232 to Cambridge, Maryland would result in that community's second

aural local FM service. The NPRM indicates that the requested allotment can be made utilizing geographic coordinates 38-29-39; 76-13-21, with a site restriction of 15.1 kilometers (9.4 miles) southwest of Cambridge.

Counterproposal

2 Route 12 submits that the community of Stockton, Maryland is more deserving of its first local aural FM service than Cambridge, Maryland is of receiving its second FM service. Accordingly, Route 12 requests that Channel 232 be allotted to the community of Stockton, Maryland for the eventual commencement of new broadcast service.

3. The community of Stockton, Maryland is more qualified and deserving to receive the allotment due to the following factors:

(a) Stockton does not have any local aural broadcast service, nor does it have any radio channels currently allotted to the community. On the other hand, Cambridge is already well-served by one FM radio station and another AM radio station that is licensed to that community. Furthermore, five competing applications are currently pending for another new FM radio station to be licensed to Cambridge.¹

(b) Stockton, Maryland is listed in the U.S. Census as a Census Designated Place ("CDP"). Generally if a community is incorporated or is listed in the U.S. Census, the community qualifies for FCC allotment purposes. *See generally, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1992); Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC*

¹ Radio Stations WCEM-AM (1240 kHz) and WCEM-FM (106.3 MHz) are licensed to Cambridge, Maryland. And, there are five competing applications pending for new FM radio service on Channel 232 (94.3 MHz) at Cambridge. *See, e.g., BPH-19851025MG, BPH-19851028MI, BPH-19851028MK, BPH-19851028ML and BPH-19851028NG.*

Rcd 633 (1991).

4 Although Stockton, Maryland is not incorporated, other objective indicia of community status are present. For example, the Commission should consider the following:

- a. The U.S. Postal Service has assigned a separate Zip Code to Stockton, Maryland -- namely, 21864, and the U.S. Postal Service maintains a Post Office in Stockton at 1443 Snow Hill Road.
- b. Stockton is replete with numerous houses of worship, community services and businesses that identify with the town, such as:

Houses of Worship

Gunby Presbyterian Church

1520 Snow Hill Road
(410) 632-1698

St. John's Holy Church

Saint John's Road
(410) 632-0010

Refugee Temple Revival Center

5515 Hill Road
(410) 632-1181

Fire Department

Stockton Volunteer Fire Company

Route 12 (Snow Hill Road)
(410) 632-3030

Restaurants

Ayres Seafood

Pocomoke Road
(410) 632-2570

Stockton Sportsmen Club

1745 Snow Hill Road
(410) 632-0069

Marina & Travel

Thornes Marine

1237 Greenbackville Road
(410) 957-4481

Retail, Home Maintenance

Hair Loft

Little Mill Road
(410) 632-1995

Payne's Electric

1633 Snow Hill Road
(410) 632-2764

DTK Landscaping & Property Maintenance

5801 George Island Landing Road
(410) 632-2666

Fireplace Supply Co.

5807 George Island Landing Road
(410) 632-9944

Gold Shield Security Services

5737 George Island Landing Road
(410) 632-2436

Agriculture

Lambertson Farms, Inc.
5750 Rabbit Knaw Road
(410) 632-1499

5. Route 12 submits that when all of the above factors are considered -- namely, the Stockton Zip Code and local Post Office, the existence of a wide variety of houses of worship and businesses, and Census Designated Status of the community by the U.S. Census Bureau -- the Commission should agree that Stockton has a geographically identifiable population grouping. The Commission has long held that a proponent such as Route 12 need not show that the borders of an unincorporated locality are precisely ascertainable if objective indicia of community status are present. *See, FM Channel Assignments: Middletown, California, 69 RR 2d 1626 (MMB 1991).*

6. Where, as here, two qualified communities are competing for the allocation of a new radio channel, the FCC must choose between the conflicting proposals and base its decision on the following allotment criteria as set forth in *Revision of FM Policies and Procedures, supra*:

- (1) first full-time aural service;
- (2) second full-time aural service;
- (3) first local service; and
- (4) other public interest matters.

Based upon the above criteria, the community of Stockton is clearly more qualified and deserving of receiving its first local aural service than the

community of Cambridge being awarded its third local aural service.

7. From a technical standpoint, the allotment of Channel 232A to Stockton, Maryland, fully complies with all applicable FCC Rules and Regulations. Attached hereto as **Exhibit No. 1** is a Technical Statement prepared by Jefferson G. Brock of Graham Brock, Inc., wherein it is demonstrated that Channel 232A can be allotted to Stockton, Maryland without a site restriction at reference coordinates North Latitude 38 - 03 - 13, and West Longitude 75 - 24 - 37. And, the instant proposal for Stockton, Maryland fully protects the allocation site for Channel 232A at St. Michaels, Maryland as approved in MM Docket 92-291./²

Statement of Interest

8. Route 12 hereby states that, in the event Channel 232A is allotted to Stockton, Maryland, it will participate in a Commission auction proceeding and submit an application to provide new broadcast service on Channel 232A at Stockton, Maryland, and that further, if its Application is granted, to construct and operate that facility.

Conclusion

WHEREFORE, the above premises considered, Route 12 respectfully requests that its Comments and Counterproposal be ACCEPTED and that the

² See, *Memorandum Opinion and Order (MM Docket No. 92-291), FCC 97-76, released March 17, 1997.*

Commission AMEND §73.202 of the Commission's Rules, as follows:

<u>City & State</u>	<u>Existing</u>	<u>Proposed</u>
Stockton, Maryland	None	232A
St. Michaels, Maryland	232A	232A
Cambridge, Maryland	292A	292A
Chincoteague, Virginia	243A	243A

Respectfully submitted,

**ROUTE 12 COMMUNITY
BROADCASTERS**

By: 
Cary S. Tepper

Its Attorney

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March 25, 2004

Exhibit No. 1

(Technical Statement of Jefferson G. Brock)

COMMENTS AND COUNTERPROPOSAL
MB DOCKET #04-20
ROUTE 12 COMMUNITY BROADCASTERS
ALLOT CHANNEL 232A
STOCKTON, MARYLAND
March 2004

TECHNICAL STATEMENT

1. This technical statement and attached exhibits have been prepared on behalf of Route 12 Community Broadcasters ("Route 12"), proponent of the allotment of Channel 232A to Stockton, Maryland. The proposed allotment to Stockton, Maryland, is mutually exclusive with the requested upgrade and community change request submitted by CWA Broadcasting, Inc. ("CWA"), the licensee of WINX-FM, Channel 232A, Cambridge, Maryland.¹ CWA has requested that Channel 232A at St. Michaels, Maryland, be upgraded to Channel 232B1 and that the improved channel be re-allotted to Cambridge. It is noted that this request is also mutually exclusive with a request submitted by Dana J. Puopolo ("Puopolo") requesting the allotment of Channel 233A at Chincoteague, Virginia. The Puopolo request was submitted to the Commission on September 26, 2003, and is not yet the subject of a Notice of Proposed Rule Making. The allotment of Channel 232A to Stockton, Maryland, will provide a first local service to this community.

DISCUSSION

2. The community of Stockton, Maryland, is located in the southern portion of Worcester County, Maryland. The community is listed in the 2000 Census of the State of Maryland as a

1) The community of license of WINX-FM was changed from Cambridge, Maryland, to St. Michaels, Maryland, in MM Docket #92-291. The licensee has never submitted an application seeking to relocate its facility to St. Michaels.

Census Designated Place ("CDP"). Stockton presently has no licensed AM or FM service in the community. Stockton is not located in or near any designated Urbanized Areas, as defined by the Census.

PROPOSAL

3. Channel 232A can be allotted to Stockton, Maryland, without a site restriction. The reference site for the proposed allotment of Channel 232A at Stockton, Maryland, is North Latitude 38° 03' 13" and West Longitude 75° 24' 37". Attached as Exhibit #1 is a map depicting the area to locate a transmitter site for Channel 232A at Stockton, Maryland. Further, attached as Exhibit #2 is a §73.207 spacing study demonstrating that Channel 232A meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities, with the exception of the licensed facilities of WINX-FM at Cambridge, Maryland (as discussed further below), the proposed allotment of Channel 232B1 at Cambridge, Maryland, and the proposed allotment of Channel 233A at Chincoteague, Virginia. From the proposed reference site, a theoretical 3.16 mV/m (70 dBu) signal will be provided over Stockton.

4. The requested proposal for Stockton, Maryland, fully protects the allocation site for Channel 232A at St. Michaels, Maryland. WINX-FM was ordered to change its community of license from Cambridge, Maryland, to St. Michaels, Maryland, in MM Docket #92-291. That order is final. From its operating site, WINX-FM does not place a 70 dBu contour over the community of St. Michaels and would, therefore, be required to relocate to be in compliance

with the city grade coverage requirement of the Commission's rules. Therefore, only the St. Michaels allocation reference site for Channel 232A is being protected by this instant request.

5. Route 12 herein requests the following changes in §73.202 of the Commission's rules:

Stockton, Maryland

Present	Proposed
None	232A

St. Michaels, Maryland

Present	Proposed
232A	232A

Cambridge, Maryland

Present	Proposed
292A	292A

Chincoteague, Virginia

Present	Proposed
243A	243A

PUBLIC INTEREST

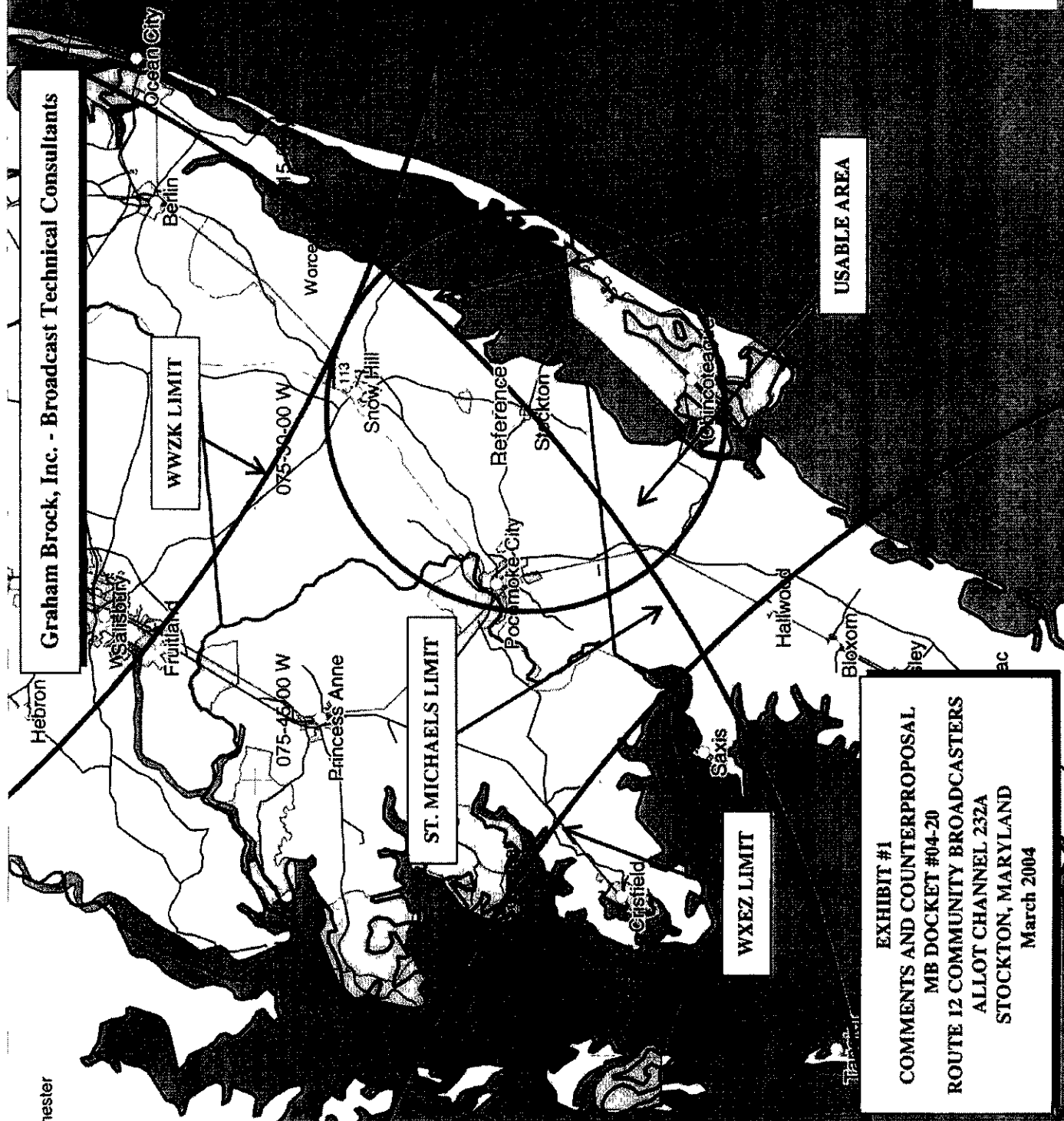
6. The allotment of Channel 232A to Stockton, Maryland, will provide that community with its first locally licensable FM channel. A maximum Class A facility operating from the reference site will provide 60 dBu (1.0 mV/m) service to 33,499 persons in 2,516.1 square

kilometers.² Further, as a result of the allotment to Stockton, St. Michaels, Maryland, would retain its first local service, and Chincoteague, Virginia, is not deprived of a channel, since Channel 243A is already allotted to the community. Once Channel 232A is allotted to Stockton, Maryland, Route 12 will participate in the necessary procedures to seek a construction permit for authority to implement a new station at Stockton.

7. The foregoing technical statement was prepared on behalf of Route 12 Community Broadcasters by Graham Brock, Inc., its Technical Consultants. All data related to FM facilities was extracted from the CDBS database and all population data was extracted from the PL 94-171 2000 Census data files. We assume no liability for errors or omissions in either database that may be adverse to the requests contained herein.

2) Assuming a maximum Class A facility, with uniform terrain

Graham Brock, Inc. - Broadcast Technical Consultants



USABLE AREA

ST. MICHAELS LIMIT

WWZK LIMIT

WXEZ LIMIT

EXHIBIT #1
COMMENTS AND COUNTERPROPOSAL
MB DOCKET #04-20
ROUTE 12 COMMUNITY BROADCASTERS
ALLOT CHANNEL 232A
STOCKTON, MARYLAND
March 2004

COMMENTS AND COUNTERPROPOSAL
MB DOCKET #04-20
ROUTE 12 COMMUNITY BROADCASTERS
ALLOT CHANNEL 232A
STOCKTON, MARYLAND
March 2004

EXHIBIT #2

Allocation study for Stockton, Maryland
Using proposed reference site

REFERENCE 38 03 13 N 75 24 37 W	CLASS = A Current Spacings ----- Channel 232 - 94.3 MHz -----	DISPLAY DATES DATA 03-12-04 SEARCH 03-17-04
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Call N. Lat.	Channel W. Lng.	Location Ant	Power	Dist HAAT	Azi	FCC	Margin
RADD	ADD 232A	Stockton	MD 0.0	0.0	0.0	115.0	-115.00
	38 03 13	75 24 37	0.000 kW		0 M		
	> Counterproposal MB Docket # 04-20						
1 RADD	ADD 233A	Chincoteague	VA 13.67	167.6	72.0	-58.33	
	37 56 00	75 22 36	0 000 kW		0 M		
2 RADD	ADD 232B1	Cambridge	MD 86.27	304.9	143.0	-56.73	
	38 29 39	76 13 21	25.000 kW		100 M		
3 WINXFM	LIC 232A	Cambridge	MD 85.38	318.9	115.0	-29.62	
	38 37 49	76 03 24 CN	4.600 kW		110 M		
	CWA Broadcasting, Inc.		BLH-19990715KB				
4 RDEL	DEL 232A	St. Michaels	MD 114.77	318.3	115.0	-0.23	
	38 49 17	76 17 27	6.000 kW		100 M		
4 ALLO	RSV 232A	St. Michaels	MD 114.77	318.3	115.0	-0.23	
	38 49 17	76 17 27	6.000 kW		100 M		
			RM-8133				
WWZK	LIC 232A	Avalon	NJ 131.17	24.1	115.0	16.17	
	39 07 48	74 47 20 CN	3.300 kW		91 M		
	Coastal Broadcasting System		BMLH-19891211KO				
WXEZ	LIC-Z 231B	Yorktown	VA 137.04	227.1	113.0	24.04	
	37 12 33	76 32 35 ZCN	40.000 kW		162 M		
	Chesapeake Bay Broadcasting		BLH-19960430KB				
WRDX	LIC 234B	Dover	DE 128.06	354.0	69.0	59.06	
	39 12 03	75 33 55 CN	50.000 kW		115 M		
	Capstar TX Limited Partnership		BMLH-19931129KC				
WRVQ	LIC 233B	Richmond	VA 182.86	247.3	113.0	69.86	
	37 24 13	77 18 59 CN	200.000 kW		107 M		
	Clear Channel Broadcasting		BLH-6152				

- Note 1: This proposed allotment is not yet the subject of a Notice of Proposed Rule Making.
- Note 2: This instant request is a counterproposal to the Cambridge, MD request.
- Note 3: WINX-FM was ordered to St. Michaels, MD in MM Docket #92-291.
- Note 4: This shortage is less than 0.49 kilometer and therefore rounds to zero.

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Route 12 Community Broadcasters to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

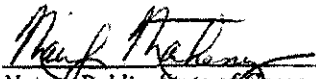
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 23rd day of March, 2004.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 23rd day of March, 2004.*




Notary Public, State of Georgia
My Commission Expires September 3, 2007

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 25th day of March, 2004, I have served a copy of the foregoing "**Comments & Counterproposal of Route 12 Community Broadcasters**" first-class, postage-prepaid, on the following:

*John A. Karousos
Assistant Chief, Audio Division
Media Bureau
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(Counsel to CWA)


Cary S. Tepper, Esq.

*/ indicates delivery by hand